



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2011-N226]

[FXHC-1113-0000-05D]

**Proposed Safe Harbor Agreement for the Shasta Crayfish in Cassel, Shasta County,
California**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that Michael, Melanie, and Paul Kerns (applicant) have applied to the U.S. Fish and Wildlife Service (Service) for an Enhancement of Survival permit under the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed safe harbor agreement (agreement) between the applicant and the Service for the federally endangered Shasta crayfish (*Pacifastacus fortis*). The agreement is available for public comment.

DATES: To ensure consideration, please send your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments to Mr. Rick Kuyper, via U.S. mail at U.S. Fish and Wildlife Service, 13501 Franklin Boulevard, Galt, California 95632, or via email at *richard_kuyper@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Kuyper, Sacramento Fish and Wildlife Office (see ADDRESSES); telephone: (916) 691-4531.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the document for review by contacting the individual named above. You may also make an appointment to view the document at the above address during normal business hours.

Background

Under a safe harbor agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting

species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe harbor agreements, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through safe harbor agreements are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c) and 17.32(c). An enhancement of survival permit allows any necessary future incidental take of species above the mutually agreed upon baseline conditions for the species, as long as the take is in accordance with the terms and conditions of the permit and accompanying agreement. The federally endangered Shasta crayfish (*Pacifastacus fortis*) is also listed as endangered under the California Endangered Species Act, and the Service has worked closely with the California Department of Fish and Game during the development of this safe harbor agreement.

Proposed Safe Harbor Agreement for the Shasta Crayfish

The agreement would cover a 0.25-acre pond located on the applicant's property. The pond has no direct inflow or outflow from surface waterways and is fed by an isolated spring that flows from an extensive basalt lava flow. The water from the spring is ponded by a levee that was originally built in the early 20th century. Water flows out of the pond through a drain pipe into a ditch and then goes subsurface. Therefore, the pond has barriers both upstream and downstream that prevent species that predate on, or compete with, Shasta crayfish from entering.

Currently, the pond does not contain Shasta crayfish, predatory species, or nonnative crayfish that would compete with the Shasta crayfish. Because the pond does not contain Shasta crayfish the baseline for the Agreement would be zero. Other native aquatic flora and fauna, which could be important for Shasta crayfish, are present and plentiful. The applicant would undertake some enhancement of the pond by placing rock substrate along certain areas of the pond's bottom to create refugia and foraging habitat for Shasta crayfish. Some incidental take of Shasta crayfish could occur in the future during routine maintenance of a water intake pipe on the south side of the pond.

Because all extant populations of Shasta crayfish are currently in rapid decline due to the presence of nonnative predators and competitors, the Service is working closely with the California Department of Fish and Game and others to determine the feasibility of relocating individual Shasta crayfish from existing populations to the applicant's pond to establish a new population. Once the safe harbor agreement is signed, the landowners will allow the Service to translocate individual Shasta crayfish from nearby populations to their pond. The pond would provide high-quality foraging and breeding habitat that is free of nonnative crayfish and predatory fish species, thus creating a high likelihood that the applicant's pond will support a self-sustaining population of Shasta crayfish throughout the duration of the safe harbor agreement. If Shasta crayfish are established in the applicant's pond, this population could potentially be used to repopulate extirpated populations in other suitable areas within the historic range of the species.

Upon approval of this agreement and satisfactory completion of all other applicable legal

requirements, and consistent with the Service's Safe Harbor Policy (64 FR 32717), the Service would issue an Enhancement of Survival permit to the applicant. This permit will authorize the applicant to take the covered species incidental to the following: (1) implementation of the management activities specified in the agreement; (2) other lawful uses of the property, including normal routine land management activities; and, (3) a return to baseline conditions, if desired by the applicant.

An applicant would receive assurances under our "No Surprises" regulations (50 CFR 17.22(c)(5) and 17.32(c)(5)) for all species included in the enhancement of survival permit. In addition to meeting other criteria, actions to be performed under an Enhancement of Survival permit must not jeopardize the existence of federally listed fish, wildlife, or plants.

Public Review and Comments

The Service has made a preliminary determination that the proposed agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.). We explain the basis for this determination in an Environmental Action Statement that is also available for public review.

Individuals wishing copies of the Environmental Action Statement, and/or copies of the full text of the agreement, including a map of the proposed permit area, should contact the office and personnel listed in the ADDRESSES section above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Service will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If the Service determines that the requirements are met, we will sign the proposed agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the applicant for take of the Covered Species incidental to otherwise lawful activities in accordance with the terms of the agreement. The Service will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Authority

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

December 14, 2011_____

Date

**Susan K. Moore
Field Supervisor
Sacramento Fish and Wildlife Office
Sacramento, California**

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